

Judge refuses to restrict water releases from Upper Klamath Lake

By **MATEUSZ PERKOWSKI**
Capital Press

A federal judge has denied a temporary restraining order sought by the Klamath Tribes that would restrict water releases from Upper Klamath Lake to benefit threatened sucker fish.

The tribes claim the U.S. Bureau of Reclamation is prioritizing flows in the Klamath River to benefit threatened coho salmon at the expense of Lost River and shortnose suckers, which suffer from lower lake levels.

U.S. District Judge Michael McShane has now refused to interfere in the agency's plan to regulate water in the Klamath Basin, ruling that the tribes are unlikely to prove the federal government is violating the

Endangered Species Act.

"Here, the Defendant Bureau, in coordination with expert agencies and all competing interests, is better equipped to serve the public interest than a judge with a law degree," McShane said in the May 6 ruling.

While the agency's actions may harm threatened suckers, it's taking the "appropriate steps" under ESA to deal with this year's severe drought, which will cause "devastation" to ecosystems and communities from Upper Klamath Lake to the Pacific Ocean, he said.

The lake has already fallen below the optimum level for sucker spawning and it's unlikely to meet other conditions in a "biological opinion" that guides operations for the Klamath irrigation project, McShane



Associated Press File

A debate over water levels in Oregon's Upper Klamath Lake has sparked a legal dispute among tribes, irrigators and the federal government.

said.

However, the Bureau expects to keep the elevation high enough for the fish to migrate through a shallow area and into a bay with higher-quality water during the summer, he said.

Though the "terms and conditions" of the biological opinion are unlikely to be met this year, the agency has coordinated with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to adapt to the

drought, McShane said.

"To the extent that the Bureau was required to engage in informal consultation with USFWS, they have satisfied this burden by maintaining regular communication with the Service as they determined the causes for the low elevation of Upper Klamath Lake and developed temporary operating procedures to address the situation," the judge said.

The government has taken "proactive steps" to keep the lake's elevation as high as possible, such as suspending irrigation deliveries and diversions, McShane said. "The Bureau cannot control the current hydrologic conditions; they can only work within these natural limitations."

To obtain a temporary

restraining order, the Klamath Tribes would have to show they're likely to prevail in the litigation but McShane said they hadn't met this "threshold."

The Klamath Irrigation District, which has intervened in the lawsuit, acknowledged that it would also prefer for the lake level's to be kept higher to avoid infringing on its water rights.

However, the district has argued the agency can't simply take away water that's contracted to irrigators and must instead acquire their water rights.

The Klamath Water Users Association, which has also intervened, opposed an injunction that would prohibit the lake from falling below a certain level if that meant curtailing water available to irrigators.



Capital Press File

Farmworker housing in Mattawa, Wash.

Washington issues new rules for housing farmworkers

By **DON JENKINS**
Capital Press

Washington agencies Friday issued new emergency COVID rules for housing farmworkers, relaxing some restrictions for fully vaccinated workers.

The rules retain a 15-worker limit on shelters with bunk beds. However, fully vaccinated workers in one group will be able to share kitchens and restrooms with workers from other fully vaccinated groups.

"It's a big step forward," Wafra CEO Dan Fazio said.

Wafra, a supplier of foreign workers on H-2A visas, and the Washington Farm Bureau sued the Department of Labor and Industries and Department of Health over the emergency rules.

Wafra and the Farm Bureau claimed the rules were unreasonable. They have been in place for a year and were extended Friday because emergency rules must be renewed every 120 days.

The old rules expired Saturday and the new rules took effect Sunday.

L&I and the Health Department incorporated several changes sought by

Wafra and the Farm Bureau, though stuck with the 15-worker limit on shelters with bunk beds. In larger units, workers can't use the top bunk.

Even if all workers are vaccinated, they must wear masks and stay 6 feet apart if they mix with workers from another fully vaccinated group.

Workers with COVID must be isolated and checked by a health care professional every day, even if by phone. Previously, the rules required twice-daily house calls by a health professional.

The new rules eliminate the requirement that workers with COVID be kept within 20 minutes of life-saving emergency medical treatment and within one hour of a hospital with ventilators.

The new rules also clarify that farms must allow legal aid and union representatives to visit group shelters. Previously, the rules authorized the entry of "community-based outreach workers" but didn't define the term.

Fazio said the new rules concede the points Wafra and Farm Bureau raised in the lawsuit, which is still pending in Thurston County.

The farm groups will review whether to pursue the suit, he said.

"We're going to take a long, hard look to see if the rules adequately address our concerns about keeping farmworkers safe and farmers in business," he said.

Fazio said the agencies should indicate how farms can get back to normal if all workers are vaccinated, rather than just extending the emergency rules.

"We can't have a regulation every 120 days for the rest of our lives," he said. "We need to know what it will take to return to normal."

The Health Department in court documents maintains farmworkers in company housing are particularly vulnerable to COVID, though Health Department testing last year found workers at Gebbers Farms in Okanogan County were far less likely to get COVID if they lived in company housing, rather than in the community. Gebbers faces a \$2 million fine for not configuring its group shelters to match state rules.

"They have to stop blaming the people who are doing things right," Fazio said.

Grass seed dealer agrees to \$300K settlement in mislabeling case

By **GEORGE PLAVEN**
Capital Press

SALEM — A Willamette Valley grass seed dealer accused of mislabeling more than 8 million pounds of seed has reached a settlement with state agriculture officials.

Dynamic Seed Source LLC and owner Trevor Abbott have agreed to pay \$300,000 in fines to the Oregon Department of Agriculture as part of the deal. The company will also have its wholesale seed dealer's license suspended for one year, effective June 30.

ODA initially alleged Dynamic Seed Source and Abbott in 2019 had mislabeled 124 seed lots as Kentucky 31, or K-31, a popular variety of tall fescue used for livestock forage,

manicured lawns, erosion control and turf.

Investigators later determined the company mislabeled 161 seed lots as K-31, totaling 207 infractions. Each lot equals up to 55,000 pounds of seed.

False labeling is a violation of both the Federal Seed Act and Oregon seed laws, regulating the sale and commerce of agricultural seed crops.

"It's all about consumer protection," said Elizabeth Savory, Seed Regulatory Program manager at ODA. "You want to make sure what's on the label, that's the seed they're getting."

Savory made the comparison to someone buying a bag of M&Ms, only to open the bag and find out there were Skittles inside — they're both round

candy, she said, but not the same thing and not what the person thought he was buying.

K-31 is sought after for its heat and drought tolerance, low maintenance and durability, fetching a premium price for growers.

About half of all K-31 grass seed comes from Missouri, Savory said, and the other half is grown in Oregon. In 2017, Missouri experienced a record-low harvest caused by several years of difficult weather. The shortage led to a spike in demand and prices.

ODA began an industry-wide investigation in 2018 at the request of the Oregon Seed Association to root out bad actors misrepresenting K-31 seed, based on anomalies in the market.



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